

FAIR USE: The Changing Balance

Karen S. Frank

State Bar of California
Intellectual Property Institute
November 6, 2008

COBLENTZ,
PATCH, DUFFY
& BASS LLP ATTORNEYS
AT LAW

Fair Use

17 U.S.C. 107:

...the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means..., for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

The 4 Fair Use Factors

- **The purpose and character of the use**
- **The nature of the copyrighted work**
- **The amount and substantiality of the portion used in relation to the whole**
- **The effect of the use upon the potential market for the underlying work**

17 U.S.C. 107

Fair Use

***Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)**

- If the BetaMax was used to make copies for a commercial or profit-making purpose, such use would be "presumptively unfair"
- However, actual BetaMax use primarily for "time-shifting" was noncommercial and not for profit:

Excused as Fair Use

Fair Use

***Campbell v. Acuff-Rose*, 510 U.S. 569 (1994)**

- No "presumption" or inference of market harm in cases involving something beyond "mere duplication for commercial purposes"
- Recognizable harm is market substitution, not any harm from criticism
- The more transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.

Fair Use

***A & M Records v. Napster*, 239 F.3d 1004 (9th Cir. 2001)**

No Fair Use:

- No transformative use of the copyrighted works
- No time shifting, but unauthorized distribution
- Market harm, through Napster's commercial benefit (advertising revenues) from infringements
- Works transmitted were "commercial" where "repeated and exploitative unauthorized copies of copyrighted works... made to save the expenses of purchasing authorized copies."

Fair Use

Kelly v. Arriba Soft, 336 F.3d 811 (9th Cir. 2003)

- Search engine crawled the web for images
- Full-size version of image downloaded to generate small, “thumbnail” versions in search results
- Click on thumbnail sent viewer page to view larger version of the image with information, including Arriba Soft banner and Arriba Soft advertising.

Fair Use

Kelly v. Arriba Soft, 336 F.3d 811 (9th Cir. 2003)

Transformative Fair Use:

- Use was "more incidental and less exploitative in nature" than more traditional types of commercial use
- Neither using Kelly's images to directly promote its web site nor trying to profit by selling Kelly's images; thousands of images in database as a whole
- Arriba Soft's use unrelated to any aesthetic or artistic purpose and, instead, was to improve access to information on the Internet.

Fair Use: Google Book Search



Google Print, back in 2005...

... and Google Book S

COBLENTZ,
PATCH, DUFFY
& BASS LLP ATTORNEYS
AT LAW

Fair Use: Google Book Search

Google Book Search books linux shell scripting Search Books

j6313@gmail.com | Web History | My Account | E

Linux and Unix Shell Programming

By David V. Tansley

Page xx

xx Introduction

- You can create scripts quickly.
- You can automate boring manual tasks using scripts.

The Bourne shell

The Bourne **shell** is the standard **shell** shipped with all UNIX systems and is linked into the **LINUX** bash **shell**. A book about **shell** programming that covers all leading systems must cover the Bourne **shell**. There are other shells, mind you, like bash, Korn, and the C **shell**. If you are familiar with the bash **shell**, the scripts presented in this book will run on your system, because bash is backward-compatible with Bourne. If you have the Korn **shell**, the syntax of the **shell** is very close.

If you look at installation scripts you will find that over 95 per cent of them are Bourne **shell** scripts. This is simply because the person who wrote the script knows it will run on any UNIX or **LINUX** system.

Shell portability

When you write a script that you want to run on any system it has to be what is called portable. Portability of scripts has two major issues:

- script syntax of the **shell** you are using;
- shell** commands.

The first issue is practically already solved if you are going to program with the Bourne **shell**: it has few or no portability problems.

Most **shell** scripts spend at least 20 per cent (or probably more) of their time using **shell** commands such as `cp`, `mv`, `mkdir` etc. This is where the problems of portability come in. Different system vendors have different command options on their machines; coupled with this if you have UNIX then you are either a System V or BSD user. This book uses generic scripts and command examples. I have only used options and commands that are common to both System V and BSD and in my opinion useful, throughout the book. Where there are slight differences they are pointed out with an alternative command, but these are few and far between.

Organization of the book

Summary

A guide to programming and using the Bourne shell for beginners and experienced users. Illustrates the ability of the shell to unlock the real potential of UNIX and Linux, and aims to get readers creating robust shell scripts.

[More about this book](#)

Contents

- [Table of Contents](#)
- [File security a...](#)
- [Using find and...](#)
- [Running command...](#)
- [Filename substi...](#)
- [Command executi...](#)
- [more >](#)

Buy this book

- [Addison-Wesley](#) - Publisher
- [Amazon.com](#)
- [JamesAMobile](#)
- [BookSense.com](#)
- [Google Product Search](#)

Find this book in a library

Search in this book

Go

Google Print, back in 2005...

... and Google Book Search today.

Fair Use: Google Book Search

philipp.lenssen@gmail.com | [My library](#) | [Web History](#) | [My Account](#) | [Sign out](#)

Google Book Search

Love: A Play in Five Acts By James Sheridan Knowles

Page

ACT I.
SCENE I.
A Room in CATHERINE'S House.
Enter CHRISTINA and NICHOLAS.

CHRISTINA.
As thou lov'st thine ease, Nicholas, restrain curiosity. It is a steed that runs away with a man, without his knowing it, until it has thrown him. The danger is never found out until the mischief is done. Besides, it is a woman's palfrey, which it befits not a man to ride. What signifies it to thee, who comes into the house, whatsoever be the hour, so it is I that let him in? '—

Doubtless, Mistress Ch—
two o'clock in the morn—
hour, to let a man into the
spark—may make a bod—
than the ordinary stock o—

Propriety, Nicholas, b—
twenty-four, more than
the young spark should come into the house, or I should
not have let him in. And now mark what I say to you.

Share this clip

Format
☒ Image ☐ Text

Send to
☒ Blogger ☐ Google Notebook

Embed

[About this book](#)
[Write review](#)
[Add to my library](#)

Popular passages

Subjects

Buy this book
[Abebooks](#)
[Alibris](#)
[Amazon](#)
[Barnes&Noble.com](#)
[Google Product Search](#)

[Find this book in a library](#)

Search in this book

[Basic HTML mode](#)

Fair Use: Google Book Search



The New York Public Library
www.nypl.org
